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# HINTS

TO

MODERN LEGISLATORS,

AND

REFLECTIONS ON CHOOSING MEMBERS

OF THE

APPROACHING CONVENTION.

*H. M. Western*

"Anguish of mind has driven thousands to suicide: anguish of body—none: this proves that the health of the mind is of far greater consequence than the health of the body, although both are deserving of much more attention than either receive."—LACON.

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BY A MEMBER OF THE NEW YORK BAR.

*Giving Wings to the Young*

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## CHAPTER I.

### GENERAL OBSERVATIONS.

In the same degree as the mind is superior to the body, is it important that any improvement in things which affect it, should be discussed and adopted, yet, although a man would be immortalized who should discover a new thing affecting the body or its comforts, or conveniences, he will hardly be thanked if he points out an improvement ever so beneficial to the mind—the world appreciates that which is tangible, and to a great extent that only, and yet our bodies are mainly preserved or destroyed by that which affects the mind.

The world takes no note of the thousands who die of diseases of the mind—but if ten cases occur of yellow fever or cholera, all sympathize, all tremble; a little reflection nevertheless, will prove that during the last ten years, more have died of the “panic” “the suspension of specie payments,” and the “great fires,” than of the yellow fever, the cholera, or the small pox. All were struggling to discover antidotes for the cholera, but scarce any one has given a thought of the proper remedy for ruined fortune, crushed hopes, or broken hearts.

This apathy to that which so deeply concerns the prosperity and happiness, nay, to some extent the very existence of every one of us, is one of those unaccountable inconsistencies which has ever existed with the mass of mankind, indeed it seems as if man was ever ready, and ever willing to perform any other labor than the labor of thinking, and human nature seems prone to believe that to better his condition his hands are more useful than his head—yet those hands are blind guides without some head to think for them.

As civilization has marched onward--the most obvious improvement has been made in almost every branch of science, yet except by abolish-

ing imprisonment for debt, and somewhat limiting capital punishment, it is difficult to discover a corresponding melioration or improvement in the application of the laws to the real state and condition of man ; the law as it was, and as it is to a great extent, seems to be formed and administered toward men as if they had nothing but bodies to be affected by it—and as if its effects could reach no further than bones and muscles,—but experience has proved, alas, that the barb penetrates deeper, and reaches both nerves and brain.

If a man is attacked with an alarming illness, his safety and his recovery becomes the duty of those nearest to him—and there is instantly a laudable emulation awakened amongst men to staunch his sudden wound, or to sooth and supply his helplessness—benevolence seems to flow towards him as a matter of course, as well from the good as the bad ; the physician, pay or no pay, yields his experience and his drugs, the individual into whose hands he falls gives half the loaf of his children to supply his necessities, and under the penalty of the curse of the whole community dare neither do less.

But shift the scene ; let the misfortune or the vices of others, or his own want of judgment—or more likely still the mis-government of the country, reduce an equally meritorious man to insolvency and ruin—let him contemplate the tender partner of his bosom bereft of the comforts and appliances to which she was born and with which she has been happy : let him feel his inability to continue the education, perhaps the very food of a beloved set of children—let him see bright hopes dead—ample provision for old age gone forever—the world's face averted and his season of manly effort passing, or past—if by this time his mind is not sick—if the incipient stages of a consumption, or a broken heart are not on him—it must be because he has no mind to be affected, and he is therefore a brute ; (of such I am not treating)—is the man thus affected less an object of compassion and of tender regard than he to whom the generous Physician so promptly afforded his aid ? Reader let me appeal to your experience of others, if not to what you have felt yourself, as to which of the two patients the most commiseration is due—and yet pause and blush for the dissimilar treatment which they receive ; for the disease of the body the treatment is kindness, benevolence, pity—for that of the mind contempt, insult, extortion—and yet the one disease kills even more surely than the other—let me ask you how

many have you personally known after some sad reverse of fortune, to hasten to an insolvent's grave, by the way of the inward gnawings of concentrated and concealed griefs, and hopeless remedy: the more common auxiliary, the bottle—the more gradual approaches of consumption or the more prompt application of the pistol, or the briny wave—if this be so, benevolence, philanthropy—nay, more, common humanity—beyond this, (justice) to such a man, and above all to the innocents dependant on him, calls on us all for at least an attempt to apply a remedy.—How sadly is the law as it exists, adapted to this purpose—the moment a man is thus circumstanced, the signal is given to the minister of the Laws—then instead of the consoling kindness of a friend, he receives the unwelcome visit of the tipstaff. The practising attorney takes the place of the benevolent physician—the remnant of his wealth, before barely sufficient to its last cent, to meet the just demands of his creditors, is at once exposed to the additional exactions of taxed costs—sheriff's poundages, and the various other tender mercies of the law—his name is bawled forth in your public tribunals—his inability (promptly to pay) is spread over the parchments of your Courts—the last remnant of credit and of hope deserts him, and he feels himself to be, as he is, a “doomed man”—what a paradox is this state of things? Our country is said to be our parent—to her, and her voice as heard in the laws, we look for admonition, direction and protection—should we not find emanating from that mother too, somewhat of endurance, somewhat of tenderness, something of relief? Alas, no such soothing qualities are there; she contemplates her child already staggering under his load of debts and embarrassments; she sees that one feather more will break his back, and with a heathen kindness, she promptly gives him a multitude through her ministering angels of the law. What would be said to that Levite, who not content with passing on the other side, should have thrown dust into the wounds of the stranger, and thus prevented the Samaritan from binding them up?

It is not always sufficient to point out an evil; the work is then at best but half done—and although in so vital and deep rooted a disease as the one in question, a perfect remedy cannot be expected; yet a few hints may happily set our readers to thinking and improving on the plan now presented. There are many amongst us who are well paid in gold and in honors for doing our thinking for us; to them then—our Chancellors, Judges, Statesmen, Legislators, the Members of the next Con-

vention—I appeal and respectfully submit the following ideas and suggestions: First, a radical change in the principles of our Insolvent Laws: and, Second, a modification and improvement in the application of the law for the collection of debts.

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## CHAPTER II.

### ON A PROPOSED CHANGE IN THE PRINCIPLES OF THE INSOLVENT LAWS.

The changes I propose, embrace, mainly, a more extensive use of the trial by Jury; the adaptation of some of the principles of the bankrupt laws of Great Britain, and above all, a principle of protection instead of persecution. First, I premise that unless an honest man's faculties have become palpably impaired either by his pecuniary disasters or by bad habits, he is the most fit person to continue in the management of his own affairs, provided this can be done with a proper regard to the safety of his creditors, himself and his family. Hence, upon its being ascertained that a man cannot meet his engagements as they become due, he should be protected in the use and management of his property, and against suit, annoyance, or expense, by presenting a true statement of his affairs to a proper officer, who, for the benefit of his creditors, should take from him proper security for the application of the property under his direction, with the power of devoting to him a certain allowance so long as his services were beneficial or requisite, or if deemed more fit, that the property be placed with certain experienced trustees, to be so applied and used as they, under the direction of the officer, might decide; or the like exemption might be extended in point of time only: or it might be combined with the condition of paying so much per cent. periodically, until the debt was discharged, or the property might be taken at once, and the debtor set free; and if the debtor on the one hand, or the creditor on the other, were dissatisfied with the equitable directions of the officer or trustees, then a Jury should be interposed whose verdict should furnish the rule.

The privilege of instituting this process should belong also to the creditor upon any act of bankruptcy being committed, and perhaps in other cases which will suggest themselves.

The effect of these provisions would be, that an honest man could go on with his business, collect his outstanding dues to the full payment of his creditors, and to the saving, in most cases, of a surplus for himself or his family. The benefits to him would be such that the concealment of any part of his property would be against his interest, as it would decrease his ability to procure the required security, and detract from the officer's confidence in his fitness to continue in the management of his affairs : if his family expenses had been extravagant or unadapted to his estate, the restricted allowance would at once reduce it to a prudent and healthy standard. By the interposition of a Jury, that kind of business knowledge which, in every vocation, is more or less a mystery, would be brought to the aid of the Judge and fitly applied to the case in hand ; arguments and reasoning to the Jury upon the details of each case could be gone into, and the propriety of this or that course fairly investigated and determined on. It will be seen in all this, that an honest man, under the worst of circumstances, would have a chance to enjoy a little peace of mind, to pay his debts, and retrieve his fallen estate ; thus the creditor would get his debt, and the community have a valuable and a tried man preserved to them and his family ; thus protecting the community from the pauperism of the children of the debtor, if not sometimes of the creditor, too : in other words, in proportion as a man was honest and unfortunate, should the application to him of the law be tender, liberal and merciful. It should be made his interest to be frugal, industrious and honest ; but as the law stands, it is, I fear, his interest to be the reverse.

It is a singular fact, that, in some of the features of the foregoing, there is a striking analogy to the doctrine of *extents*, which has fallen into disuse or been exploded from the law. This was an ancient writ by which the property of a debtor was taken from him, and its income applied to his debts until they were paid, when it was given back to him. At this day, under the Spanish laws, there is a similar regulation. So far, at least, the laws of this enlightened age are more barbarous than those of our crude forefathers, or of other nations on whom we look as vastly inferior to us in intelligence.

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## CHAPTER III.

ON THE MODIFICATION AND IMPROVEMENT IN THE APPLICATION OF THE  
LAW, FOR THE COLLECTION OF DEBTS.

It has often occurred after a severely contested trial betwixt two fair men, that one or the other has remarked to me, that if he had known such and such a fact had existed, on the other side, or if he had supposed he was bound to do this, or that, he never would have brought or defended the suit, in other words, I have seen that nine-tenths of the contests between decent men grow out of an entire misapprehension, or partial ignorance of certain facts on the other side; to a good man it must certainly be painful that such a controversy should exist, to the serious injury of both; indeed there is scarce a litigated case where the suitors on both sides could not at the threshold, and generally where they would not have been willing to give up and soften down some of their strict rights on both sides; for prompt pay on one side, and to escape from anxiety and toil on the other. The asperity which half the time leads one man to sue another should have some safety valve at which to escape, instead of being tediously, uselessly and sometimes injuriously pent up, and then worked off by the action of the machinery of the law and not unfrequently by the collapsing of a flue. Three quarters or more of the suits now tried would be settled in an hour if each side could learn in a manner somewhat to be relied on, the law and the facts applicable to their own and the other side. To attain this end let a new and preliminary Tribunal be established—before which the parties about to litigate, should be heard on their oaths, with discretion in the judge to call in witnesses on important points where the parties differed in point of fact. Compel every man to cite his neighbor here, before he be allowed to sue elsewhere, and let the adjudication be only advisory, and not binding. But at the same time let several penalties be visited on the man who after refusing to listen to this advice, plunges his neighbor into law, and is found to be in the wrong. It would be found that whenever two honest men disagreed, half an hour before this tribunal would settle the case, send both away satisfied, and what is also important, generally good friends. Such a court would save hundreds of thousands of dollars per year to this community; it would dispense

with the services and salaries of three-fourths of our present judges, spare the present cruel sacrifice of the time of jurors and witnesses in attending court, and by preventing litigation save the morals of the communities from thousands of perjuries which now infect it. Many a man is willing to gain a cause through the misrepresentations of weak or wilful witness, who if put to his own oath, would from pride alone disclose the truth.

Suppose a man like Ex-Judge Edwards to be the Judge of such a Court, where would two decent men be found who would set up either of their wills or judgments against his advisory decision, with all the facts before him, and the aid of his learning, integrity, and knowledge of human nature: if either did, and the Judge in the end should be found to be right, the obstinate party would be sure to be sent to a criminal judge, and from him to receive a good natured admonition "to get out stone for six months."

The justice of this Court should also be administered gratis. Indeed the principle of the exaction of taxable costs and statute fees is of more than questionable propriety throughout. It has struck me often, as a disgusting spectacle, to see a Judge receive a dollar for yielding a matter of common justice to a suitor; and I have known a Judge decide a motion at Chambers one way, but because the party in whose favor it was made would not pay the dollar for his order, he reversed his decision and received the dollar from the other side; putting the change on the ground of the *change*; a state of things in itself demoralizing and pernicious. The Constitution has said, "justice shall neither be bought nor sold," and although the provision had not probably in view as large a scope as the words literally cover, yet here, as in other parts of that sacred instrument, the words seem to have a strange oracular applicability; litigation would vastly become lessened if there were no costs to be paid by the parties to Judges and practising Attorneys. Nor to the worthy, intelligent and talented, (and hence the only part of the profession which is not a nuisance,) would this state of things be an injury. Their experience and observation must have taught them, if they have ever reflected on it, that it is for the good which they did their clients or others that they have been best paid, and that the lawyers who have become rich, have, almost without exception, become so from the gratitude and liberality of their clientage, rather than from the trash wrung from the hard hands of their unfortunate opponents.

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Our laws and their application need remodelling to suit the advancing intelligence of the age, but let the innovators beware how they entrust the blacksmith to mend a watch, or a politician to establish a code of morality.

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